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No. 94-1619

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

JAMES H. DOUGLAS,
Petitioner,
v.
FIRST SECURITY FEDERAL SAVINGS BANK, *et al.*,
Respondents.

On Petiiton for Writ of Certiorari to the Court of Appeals of Maryland

BRIEF FOR RESPONDENTS GREENBERG, MADDOX & SHELTON, CHARTERED, LINDA LAYOU AND LINDA WITT IN OPPOSITION

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QUESTIONS PRESENTED

I. WHETHER THE UNITED STATES SUPREME COURT HAS JURISDICTION OVER THIS CASE IN LIGHT OF THE PETITIONER'S FAILURE TO RAISE ANY OF THE CONSTITUTIONAL OR FEDERAL ISSUES IN THE STATE COURT?

II. WHETHER THE MARYLAND TRIAL AND APPELLATE COURTS' APPLICATION OF MARYLAND LAW ON RES JUDICATA TO PETITIONER'S STATE COURT CLAIMS WARRANTS REVIEW BY THE SUPREME COURT ON WRIT OF CERTIORARI?

PARTIES TO THE PROCEEDING

Petitioner

JOHN H. DOUGLAS

Respondents

GREENBERG, MADDOX & SHELTON, CHARTERED
LINDA LAYOU
LINDA WITT
FIRST SECURITY FEDERAL SAVINGS BANK, INC.
EDWIN RECTOR
GEORGE MARIENTHAL
ELAINE DOUPHIN
SUZANNE HUDSON

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BRIEF FOR RESPONDENTS GREENBERG, MADDOX & SHELTON, CHARTERED, LINDA LAYOU AND LINDA WITT IN OPPOSITION

TO THE HONORABLE SUPREME COURT:

Respondents Greenberg, Maddox & Shelton, Chartered, Linda Layou and Linda Witt respectfully request that this Court deny the Petition for Writ of Certiorari submitted by Petitioner, John H. Douglas.

OPINIONS BELOW

The Court of Special Appeals of Maryland affirmed the trial court's grant of the Motion to Dismiss filed by the Respondents on the grounds of *res judicata,* applying Maryland law. That decision is reported at 101 Md. App. 170 (1994). The Slip Opinion is reproduced in Appendix B to the Petition for Writ of Certiorari. John H. Douglas subsequently filed a Petition for Writ of Cer-

tiorari to the Court of Appeals of Maryland. The Court of Appeals of Maryland denied that Petition. *See* 101 Md. App. 170. Petitioner subsequently filed a Request for Reconsideration which was denied by the Maryland Court of Appeals. That decision is contained in Appendix A of the Petition for Writ of Certiorari.

JURISDICTIONAL STATEMENT

Petitioner claims jurisdiction of this Court under 28 U.S.C. 1257(a). However, as set forth *infra*, Respondents dispute this jurisdictional statement and state that the Supreme Court of the United States has no jurisdiction over this matter, as Petitioner did not raise any of the constitutional or federal issues in the State Court which he now proposes to present, for the first time, in this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner cites the Fourteenth Amendment and the Fifth Amendment to the United States Constitution as the "constitutional provisions involved." Respondents dispute this contention as no constitutional arguments were raised in the State Court below. As discussed, *infra*, the State Court's decision was based solely upon Maryland law on *res judicata* and did not involve any constitutional arguments or issues.

STATEMENT OF THE CASE

During June of 1989, John H. Douglas ("Petitioner" or "Douglas") entered into a contract to sell Vinson L. Baker ("Baker") a certain parcel of land in Fort Washington, Maryland. The contract provided for Douglas to loan $15,000.00 to Baker and to take back a second trust mortgage. The contract was contingent upon Baker obtaining other financing. Sometime around November 1989, Baker entered into discussions with First Security Federal Savings Bank ("First Security"), a federally

chartered bank located in Chevy Chase Maryland, regarding financing. First Security issued a loan commitment letter to Baker, and went to settlement on November 15, 1989.

Baker defaulted on the loan. First Security filed for foreclosure in the Circuit Court for Prince George's County, Maryland in September of 1990. Baker first sought to enjoin the foreclosure sale in the United States District Court for the District of Columbia. The case was dismissed without prejudice to refiling it in Maryland.

Baker then filed a petition to enjoin the foreclosure in the District Court for Prince George's County, Maryland and obtained an *ex parte* interlocutory injunction. After a full-day hearing on the merits of Baker's request for a permanent injunction, Judge Harvey Johnson dissolved the injunction and permitted the sale. First Security then readvertised the foreclosure sale. First Security bought back the property at the foreclosure. There were no other bidders. Although Douglas was present at the sale, he did not bid on the property. Douglas also filed no exceptions to the foreclosure. Baker then filed for bankruptcy in the United States Bankruptcy Court for the District of Columbia, and Baker's debts to First Security and to Douglas were eventually discharged. Douglas, a secured creditor, moved to intervene in the bankruptcy proceedings. His motion was denied.

In May 1992, Baker filed another suit against First Security and its officers in the United States District Court for the Eastern District of Virginia. Baker alleged that First Security defrauded him in connection with the loan. Pursuant to a written agreement between Baker and Douglas, Douglas had substantial control over Baker's litigation in the Virginia Federal Court, interviewed witnesses, financed the litigation, provided counsel for Baker and had a stake in any potential recovery against the Bank. Judge T.S. Ellis of the Virginia Fed-

eral Court granted summary judgment for First Security.[1] The Federal District Court, applying Maryland law, found that none of the alleged misrepresentations supported a cause of action for fraud. Baker noted an appeal.

After the adverse judgment of the Federal District Court, Baker and Douglas each filed suits aginst First Security and its officers in the Circuit Court for Prince George's County, Maryland on November 11. 1992. Douglas then also filed exceptions to the foreclosure, almost two years after the sale. Douglas thereafter amended his Complaint in the Circuit Court to add claims for "fraud" and "wrongful foreclosure" against Respondent Greenberg, Maddox & Shelton, Chartered, the law firm which handled the bank's foreclosure, and two of its employees, Linda Layou and Linda Witt (collectively referred to as "the law firm"). With three suits (Baker's appeal of the federal decision; Douglas' state court suit; and Baker's state court suit) pending, First Security dismissed the foreclosure action pending resolution of these multiple suits.

First Security and the law firm moved to dismiss Baker's and Douglas' respective suits in the Circuit Court for Prince George's County on *res judicata* grounds. Baker settled with the bank, dismissed his Maryland suit and also dismissed his appeal of the Virginia federal case. On March 11, 1993, Judge Robert H. Mason of the Circuit Court for Prince George's County granted Respondents' motion to dismiss Douglas' case. Douglas thereafter filed a Motion for Reconsideration of the Circuit Court's dismissal of his case. On November 1, 1993, Judge Mason, in a 26-page Opinion and Order of Court, denied the motion, finding that "[t]here is overwhelming evidence point to [Douglas'] actual participation in the Virginia case," that "[Douglas] advances the precise is-

[1] On September 4, 1992, Judge Ellis granted summary judgment for First Security on all counts except for Counts I and VII, which were taken under advisement. On October 22, 1992, summary judgment was granted on Count I and Count VII was dismissed.

sues raised by the Bakers and decided by the federal court," and that "all the requirements for an application of *res judicata* have been satisfied."

Douglas noted an appeal of that ruling to the Court of Special Appeals on November 15, 1993. In a reported Opinion, dated July 5, 1994, the Court of Special Appeals affirmed. The Court of Special Appeals agreed with Judge Mason's analysis and reliance on persuasive federal cases holding that where privity must be determined, state law on *res judicata* must be applied to determine whether a prior federal judgment precludes a state court action. *See*, Opinion of Court of Special Appeals, Petitioner's App. B, pp. A22-A23, *citing Brooks v. Arlington Hospital Association*, 850 F.2d 191 (4th Cir. 1988); *Harnett v. Billman*, 800 F.2d 1308 (4th Cir. 1986); *Spiker v. Capitol Milk Producers Cooperative, Inc.*, 577 F.Supp. 416 (W.D. Va. 1983). As indicated by the Court of Special Appeals, there were "no Maryland cases addressing the issue of whether federal or state law applies in the instant situation . . . [however], the federal cases discussed above make a persuasive case for applying state law." Petitioner's App. B, p. A28.

The Appellate Court, applying Maryland's law on *res judicata* to the facts in the record concerning Douglas' participation and control over Baker's Virginia federal litigation, found that Douglas was a "party" in the Virginia litigation in which the federal court entered summary judgment against the named plaintiff (Baker) on all claims. The Court discussed at length a well established case from the Court of Appeals of Maryland, *Ugast v. LaFontaine*, 189 Md. 227 (1947), which held that the plaintiffs' claims were barred by *res judicata* due to their direct interest, participation and control over previous litigation, even though they had not been named as parties in the eariler litigation.

The Court of Special Appeals noted, in discussing the case at bar, that "this case is, upon close review, strikingly similar to *Ugast*." Petitioner's App. B, p. A37. The

Court thereafter exhaustively discussed the overwhelming evidence demonstrating Douglas' active control, participation and interest in the litigation in the federal court in Virginia. The Court made specific reference to the agreement whereby Douglas would provide the named Plaintiff (Baker) with an attorney, Douglas would receive a share of any recovery, and Douglas would forgive indebtedness owed to him by Baker. The Court noted that Douglas had also attended, either personally or through his own attorney, depositions in the case, and had met with and prepared a number of witnesses for their testimony.

The Court of Special Appeals also relied upon *Reddick v. State*, 213 Md. 18 (1957), for the "well-established principle of law that a person who has full knowledge of pending litigation and that it affects, and will determine, his rights and, who is entitled to appear, but who makes no effort to intervene as a party and permits a conclusion thereof without objection, such person is concluded by the proceeding as effectually as if he were named on the record." Petitioner's App. B, pp. A44-A45.

The Court recognized that Douglas had full knowledge of the Virginia litigation and its affect on its rights and interests in the property, but that he made no effort to intervene as a party and permitted the conclusion of the suit without any objection. He simply chose to direct and control the proceedings through Baker. As a result, based upon this "well established principle of law" set forth in *Reddick*, the Maryland Court of Special Appeals found that Douglas' claims were barred by *res judicata*.

The Court of Special Appeals, citing *DeLeone v. Slear*, 328 Md. 569 (1992) and *Kent County Board of Education v. Bilbrough*, 309 Md. 487 (1987), further found that the claims of Douglas in this case were the same claims or causes of action as those brought in the Virginia litigation, properly applying the "transaction test," in support of that holding. Petitioner's App. B, pp. A47-A50. The Court further noted that Douglas did not dispute that the cases involved the same transactions or causes of action.

The Court of Special Appeals found that there was a final judgment in the Virginia action which precluded the claims of Douglas, and again noted that Douglas did not dispute that the federal court's dismissal of Baker's claims were final judgments. Petitioner's App. B, p. A50.

Finally, the Court of Special Appeals addressed and refuted Petitioner's contention (based upon a misunderstanding of *Montana v. United States*, 440 U.S. 147 (1979)), that the doctrine of collateral estoppel was applicable to this case. In reliance upon well established Maryland cases, including *MPC v. Kenny*, 279 Md. 29 (1977) and *Burkett v. State*, 98 Md. App. 59 (1993), the Court correctly found that *res judicata* was the applicable doctrine because Douglas was a "party" to the Baker federal litigation due to his active participation, control and interest in that litigation. Petitioner's App. B, pp. A50-A55.

As a result, after an exhaustive discussion of the applicable Maryland law and the facts of the case, the Court of Special Appeals affirmed the trial court's decision that the claims of Petitioner Douglas were barred by the doctrine of *res judicata* and properly dismissed.

Petitioner filed a Petition for Writ of Certiorari to the Court of Appeals of Maryland. That Petition was denied on November 10, 1994. Petitioner's Motion for Reconsideration was denied on January 11, 1995. *See* Petitioner's App. A.

SUMMARY OF ARGUMENT

The Supreme Court lacks jurisdiction over this case because the constitutional issues now raised by the Petitioner were not raised in the State Court proceedings.

Additionally, the decisions of the Maryland State Courts below, which determined that the Petitioner's claims were barred by *res judicata*, were decided under Maryland law and there are no federal issues to be determined by the Supreme Court.

REASONS FOR DENYING THE WRIT

I. THE SUPREME COURT LACKS JURISDICTION OVER THIS CASE BECAUSE THE PETITIONER FAILED TO RAISE THE CONSTITUTIONAL ARGUMENTS IN THE STATE COURTS BELOW.

The Petition for Writ of Certiorari noticeably fails to comply with Supreme Court Rule 14(h). The Petition fails to set forth or designate in the Statement of the Case where in the trial court or state appellate courts the Petitioner raised the federal constitutional questions which he now asks this Court to consider. The reason for this omission is that the Petitioner did not raise any constitutional or other federal issues at any point in the State Court proceedings. A review of the Table of Citations and the "Statement of Questions Presented" contained within the Petitioner's Brief to the Court of Special Appeals of Maryland demonstrates that the Petitioner never raised any constitutional arguments prior to his filing of the Petition for Writ of Certiorari to the Supreme Court. (Attached hereto as Appendix A is an excerpt from the Petitioner's Brief in the Court of Special Appeals).

The jurisdiction of the Supreme Court to re-examine final judgments of state courts is found in 28 U.S.C. Section 1257. The Supreme Court has juridsiction to re-examine the final judgment of a state court only if the record demonstrates that the federal claims which are the subject of the Petition were adequately presented and decided in the state procedings. *Bankers Life & Casualty Co. v. Crenshaw*, 486 U.S. 71, 76-78 (1988); *Webb v. Webb*, 451 U.S. 493, 494-499 (1981).

The Petition raises two constitutional issues in its Questions Presented:

> Question 1. Whether Maryland law of preclusion, allowing a non-party participant in a prior suit to be estopped by *res judicata* rather than collateral estoppel, violates the right of due process of law?

and

> Question 3. Whether Maryland law of preclusion, allowing the doctrine of impermissible collateral attack, violates the right of due process of law?

The record in the State Court proceedings clearly demonstrates that Petitioner has never raised those constitutional questions prior to the Petition for Writ of Certiorari to the Supreme Court, and the State Courts never decided those questions. As a result, this Court lacks jurisdiction to consider those claims and the Petition should be denied.

II. THE PETITIONER'S OTHER QUESTIONS (QUESTIONS 2 AND 4) CONCERN ONLY MARYLAND LAW AND DO NOT WARRANT FURTHER REVIEW BY THE SUPREME COURT.

The Petition raises two Questions which do not concern or relate to the federal constitution or any federal law or issue:

> Question 2. What forms of participation and control by a non-party in a prior suit are sufficient to actuate the principles of preclusion?

and

> Question 4. In diversity cases where federal law governs the preclusive effects of a prior federal judgment, should courts apply state laws of preclusion on substantive issues such as privity and federal rules of preclusion on procedural matters?

As demonstrated in the Statement of Case, *supra*, and in the Petitioner's own Petition. the Maryland Courts, *applying Maryland law*, held that the Petitioner's causes of action were barred by the doctrine of *res judicata*. These decisions do not involve any question of the federal constitution, federal statutes or law. As a result, these questions do not warrant this Court's review as they are not final judgments of a state court which fall under the matters for review described in 28 U.S.C. Section 1257.

The choice of laws of the Maryland courts, and the application of the doctrine of *res judicata* under Maryland law, are issues solely and exclusively for the Maryland courts, not the federal courts. Since the Maryland courts in this case determine that the Maryland law of *res judicata* was applicable, and dismissed the Petitioner's Complaint under Maryland's doctrine of *res judicata,* there is no basis for review of the State Court's decisions by the Supreme Court.

CONCLUSION

The Petitioner failed to raise any questions concerning the federal constitution or federal law in the State court proceedings. As a result, this Court lacks jurisdiction over the issues raised in the Petition. Moreover, the decisions from the State court in this case solely involve the application of Maryland law by the Maryland courts and, as a result, the State court decisions do not warrant review by the Supreme Court.

For the reasons set forth above, Respondents respectfully request that this Court deny Petitioner's Writ of Certiorari.

Respectfully submitted,

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